KECK SENG (MALAYSIA) BERHAD

v

PENTADBIR TANAH, JOHOR BAHRU

HIGH COURT MALAYA, JOHOR BAHRU
DATO' MOHD GHAZALI MOHD YUSOFF J
[ORIGINATING SUMMONS NO. 24-738 OF 1995]
22 MAY 1996

LAND LAW: *Land acquisition – Gazette notification – Declaration in Form D – Approximate area of land to be acquired – Whether could be amended by subsequent notification – Amendment thereof – Whether declaration vitiated and nullified – Whether landowner entitled to a fresh notice – Land Acquisition Act 1960 ss. 8. 8(3), 8(4).*

LAND LAW: *Land acquisition – Gazette Notification – Declaration in Form D – Whether conclusive evidence of the fact that land was to be acquired – Amendment to approximate area to be acquired – Effect – Whether acquisition proceedings rendered null and void – Whether non-consequential.*

LAND LAW: *Land acquisition – Award of compensation – Principles – Material date for assessment of market value of land – Whether as at the date the declaration in Form D was published.*

This was a land acquisition matter in which the plaintiff, the affected landowner, apart from objecting to the award of compensation, had challenged the propriety of the acquisition proceedings adopted by the State Authority. The facts were that by a notification in Form D dated 7 January 1993 (the first notification) made pursuant to s. 8 of the Land Acquisition Act 1960 (the Act), the State Authority announced in the State Gazette that 1037 acres 3 roods and 5 poles of that land known as Lot 487, Mukim Sg. Tiram, State of Johor, were needed for the purpose of a project known as "Kawasan Perindustrian Tanjung Langsat". By a notification dated 17 February 1994 (the second notification), however, the State Authority purportedly amended the first notification when it announced that the approximate area to be acquired from Lot 487 was only 830 acres 0 rood and 32 poles and not as stated in the first notification. Subsequently, however, the State Authority again had a change of mind, and by a notification dated 4 August 1994 (the third notification), it announced that the approximate area to be acquired with regard to Lot 487 was as originally stated in the first notification, and not as amended *vide* the second notification.

The facts further showed that on 19 August 1993, i.e. a few months after the first notification but before the third notification, there was published a gazette notification wherein it was stated that the State Authority had assented to the so called "Draft Structure Plan of West Johor (as) approved by the

State Planning Committee of Johor on 3 January 1993". Apparently, this Draft Structure Plan, had approved a "zone change" in respect of a certain area in Johor from agricultural to industrial. It was evident that Lot 487 was situated in the contemplated area.

On 5 December 1994, following the conclusion of an enquiry, the defendant awarded RM35,278,320 as compensation for Lot 487. The award was based on the market value of Lot 487 as at 7 January 1993, i.e. the date of the first notification. It was clear that in coming to the award, no account was taken of the possible price appreciation of Lot 487 by virtue of the Draft Structure Plan.

The plaintiff, the registered proprietor of Lot 487, was dissatisfied with the compensation as well as the acquisition proceedings, and in consequence, submitted the relevant Form N and thereafter filed a summons seeking for declarations (i) that the second notification effectively amended the first notification with the result that the first notification had ceased to exist (ii) that even if the first notification had been revived by the third notification, any acquisition exercise carried out thereunder is null and void (iii) that the plaintiff was entitled to a fresh declaration under s. 8 of the Act, and alternatively (iv) that the Land Administrator was wrong in awarding compensation based on the value of the land as at the date of the first notification, as the material date was the date of the third notification (iv) that by reviving the first notification, the plaintiff was denied the benefit of a substantial increase in value of the land during the period between the first and the third notification thereby contravening Article 13(2) of the Federal Constitution.

Held:

[1] The publication in the Gazette of the declaration in Form D made pursuant to s. 8 of the Act is merely to give public notice that the State Authority has decided that the lands described in the schedule to the declaration are needed for one of the purposes referred to in s. 3 of the Act and nothing more.

[2] The first notification, according to s. 8(3) of the Act, is conclusive evidence that Lot 487 is to be acquired and this conclusiveness cannot be vitiated or nullified by any proposed change in the approximate area to be acquired. The approximate area to be acquired is only a secondary matter and any amendment in that respect made before the conclusion of the enquiry by the defendant cannot vitiate or nullify the declaration.

[3] By virtue of s. 8(4) of the Act a declaration in Form D shall lapse and cease to be of any effect on the expiry of two years after its publication in the Gazette if the Land Administrator has not made any award by then. This being the case, any amendment made as to the approximate area to

be acquired within the two years before the conclusion of the enquiry, which is the case here, cannot at all have any effect on the declaration as to its conclusiveness that the scheduled land will be acquired. The declaration therefore cannot be said to have ceased to be in existence.

[4] The first declaration, thus, has never ceased to exist and neither has it lapsed. It follows therefore that the question of its revival does not arise. It follows further that there is no merit in the contention that the first notification had ceased to exist by virtue of the second notification or that the third notification has the effect of reviving the declaration which had ceased to exist.

[5] Although the Act is silent, it does not specifically prohibit the State Authority from making an amendment as to the approximate area to be acquired. In the circumstance, an amendment by the defendant to the approximate area to be acquired from Lot 487, *vide* the second and third notification, cannot be termed an abuse of power. A change such as made by the defendant here, clearly, would not warrant a fresh declaration under s. 8 of the Act.

[6] The First Schedule to the Act which deals with principles relating to the determination of compensation provides that, in assessing the market value of any scheduled land, the material date for assessing the value would be the date of the publication in the Gazette of the declaration made in Form D. In the instant case, the third notification was clearly not a declaration in Form D but was merely a notice to inform that the approximate area to be acquired from Lot 487 is as stated in the declaration, i.e the first notification, and that the second notification was thereby cancelled and of no effect. This being the case, to award the market value for Lot 487 otherwise than at the date of the publication of the declaration, i.e, the first notification, would be contrary to the provisions of the said First Schedule.

[7] Section 1(2B) of the First Schedule of the Act read together with the relevant provisions of the Town and Country Planning Act 1976 provides that the fact that any scheduled land is situated in an area within the contemplation of any draft structure plan cannot be taken into account in assessing the market value of the scheduled land. This being the case, the defendant was right in not taking the Draft Structure Plan of West Johor into account when making the award. As it is, the defendant can only assess the value of Lot 487 on the basis of its category of land use being "industry" if the alteration (of category of land use) was aproved by the State Authority prior to the publication of the declaration. This was not the case here and it must follow that Article 13(2) of the Federal Constitution is irrelevant and has no bearing whatsoever.

[Application dismissed]

Case referred to:
Imperial Tobacco Ltd. v. Attorney-General [1981] AC 718

Legislation referred to:
Land Acquisition Act 1960, ss. 8(3), (4)
Town and Country Planning Act 1976, s. 10(3)
Evidence Act 1950, s. 78(1)(a)
First Schedule of the Act, s. 1(2)
Federal Constitution

Other sources referred to:
Dictionary of English Law, Jowitt's, 2nd Edn.

For the plaintiff - Philip Nainan; M/s. Lee Ong & Kandiah
For the defendant - Teo Say Eng, Senior Federal Counsel

JUDGMENT

The background to this action is as follows:

By a declaration made pursuant to s. 8 of the Land Acquisition Act 1960 (hereafter referred to as "the Act") which was published in the State Gazette on 7 January 1993, the Commissioner of Lands and Mines, Johor (hereafter referred to as the Commissioner) announced that all the scheduled land referred to therein, consisting of about 160 titles, were needed for the following purpose, namely, "Kawasan Perindustrian Tanjung Langsat". The plaintiff was the registered proprietor of nine of the titles (hereafter referred to as "the lots") described in the schedule to the said declaration and one of which was Lot 487 CT 15748 (hereafter referred to as "Lot 487") which forms the subject-matter of this application. The said Lot 487 comprised an area of 1,220 acres and the approximate area to be acquired from that lot was stated in the schedule as being 1,037 acres 3 roods and 5 poles.

Subsequently, by a notification published in the State **Gazette** on 17 February 1994 (that is, about thirteen months later) the Commissioner announced that the approximate area to be acquired from Lot 487 only, as appearing in the schedule to the said declaration, should read as 830 acres 0 rood and 32 poles instead of 1,037 acres 3 roods and 5 poles.

Consequently the Land Administrator, i.e., the defendant *vide* a notice dated 22 February 1994 made pursuant to s. 10 of the Act and addressed to the plaintiff, arranged for an inquiry to be held on 18 April 1994 for the hearing of claims to compensation for all the lots owned by the plaintiff including Lot 487. At the inquiry, the valuers acting for the plaintiff were informed by the defendant that the approximate area to be acquired from Lot 487 has been reduced *vide* the said notification published in the State **Gazette** on 17 February 1994. The inquiry was then adjourned to another date.

However by another notification which was published in the State **Gazette** on 4 August 1994 the Commissioner announced that the alteration in the approximate area to be acquired from Lot 487 as stated in the said notification published in the State **Gazette** on 17 February 1994 was thereby cancelled and that the approximate area to be acquired from Lot 487 as stated in the schedule to the said declaration published in the State **Gazette** on 7 January 1993, i.e., 1,037 acres 3 roods and 5 poles, still stands.

In October 1994, the plaintiff submitted their valuation reports for all the lots with the exception of Lot 487, based on their considered opinion as to its value as at 7 January 1993 and the valuation report for the said Lot 487 based on their considered opinion as to its value as at 4 August 1994. Another inquiry was subsequently held and, after several adjournments, was concluded on 5 December 1994 and on that date the plaintiff was awarded compensation in the sum of RM35,278,320 for Lot 487. The plaintiff has since made an objection by way of a written application in Form N to the Land Administrator pursuant to s. 38 of the Act, with regard to the amount of the compensation awarded, requiring that he refer the matter to the Court for its determination, which, I am told, is still pending. The plaintiff's grounds for objection as contained in Form N which is attached to its affidavit reads:

> 3. Bantahan kami adalah terhadap:
>
> (b) amaun pampasan.
>
> 4. Alasan-alasan kami adalah seperti berikut -
>
> (ii) **In respect of Lot 487 mentioned above**, the collector has failed to apply to the said lot the market value, damages due to severance, injurious affection and incidental expenses prevailing as at the date when the gazette notification No. 12 was revived, *viz*, 4 August 1994. The collector has erroneously treated the date of revival of the gazette notification No. 12 as 7 January 1993.
>
> (iii) The Collector has, by applying G.N. No. 12 with retrospective effect, deprived the land owner of adequate compensation in contravention of Article 13(2) of the Federal Constitution by failing to take into account the substantial changes in the market value of the land accruing over the period, 7 January 1993 to 4 August 1994.

On 8 September 1995 the plaintiff filed this action by way of an originating summons seeking the following declarations, namely -

> (1) a declaration that if a **gazette** notification declaring properties to be under acquisition under s. 8 of the Land Acquisition Act 1960 is amended by another **gazette** notification, then the first **gazette** notification ceases to be in existence and is consequently not capable of being revived by revocation of the amendment or by any other means and therefore the whole of the acquisition proceedings based on such a purportedly revived **gazette** notification and any award made thereon are null and void;

(2) a declaration that the plaintiff is entitled to get a fresh notice issued in respect of the properties under acquisition proceedings No. PBT.3/89 J.113 under s. 8 of the Act and to hold a fresh enquiry;

Alternatively

(a) a declaration that when a **gazette** notification under s. 8 of the Act in respect of a land is amended by another **gazette** notification which itself is subsequently revoked by another **gazette** notification, the original **gazette** notification is revived as at the date of the revocation and the value to be applied to the land should be the value prevailing as at the date of revocation and not the value as at the date of the original **gazette** notification;

(b) a declaration that while a revocation as aforesaid does revive the original **gazette** notification, the revival does not have retrospective effect but is effective only as from the date of revocation;

(c) a declaration that the basis of the award of compensation made by the defendant in acquisition proceedings No. PBT.3/89 J.113 in respect of Lot 487 Mukim Sg Tiram is wrong in that he applied to the land the value prevailing as at the date of **gazette** notification No. 12 i.e., 7 January 1993 for the purpose of the award of compensation and that the value he ought to have applied was the value prevailing as at the date of revocation when the amendment in the **gazette** notification No. 221 was revoked by another **gazette** notification No. 1167 on 4 August 1994;

(d) a declaration that giving retrospective effect to the revocation of **gazette** notification No. 221 and the consequent revival of **gazette** notification No. 12 to 7 January 1993 has the effect of denying the plaintiff the benefits of the substantial increase in value of the land between the date of the first **gazette** notification, i.e., 7 January 1993 and the date of revocation, i.e., 4 August 1994 and that such retrospective application to the said revocation and revival contravenes Article 13(2) of the Federal Constitution.

The facts, as discussed earlier, shows that three seperate notifications which were published in the State **Gazette** for the State of Johor are in issue and for the purpose of simplicity I will refer to them as the first, second and third notification.

The first notification, which was published in the State **Gazette** on 7 January 1993 reads:

No. 12.

Adalah dengan ini diisytiharkan bahawa tanah-tanah dan kawasan-kawasan yang tertentu yang dinyatakan dalam jadual adalah dikehendaki bagi maksud yang berikut:

Kawasan Perindustrian Tanjung Langsat.

2. Pelan bagi tanah-tanah dan kawasan-kawasan yang tertentu yang dinyatakan itu boleh diperiksa dalam waktu pejabat di Pejabat Tanah bagi Daerah tempat letaknya tanah-tanah dan kawasan-kawasan itu.

It is not disputed that the above notification is a declaration in Form D made pursuant to s. 8 of the Act, i.e., a declaration that all the scheduled lands referred to in the schedule to the declaration are needed for the purpose specified therein; s. 8 reads -

(1) When the State Authority decides that any of the lands referred to in s. 7 are needed for any of the purposes referred to in s. 3 a declaration in Form D shall be published in the **Gazette**.

(2) A copy of the list of lands referred to in s. 7 (b), amended if necessary in accordance with the decision of the State Authority, shall be included as a schedule to the declaration in Form D.

(3) A declaration in Form D shall be conclusive evidence that all the scheduled land referred to therein is needed for the purpose specified therein.

(4) A declaration under subsection (1) shall lapse and cease to be of any effect on the expiry of two years after the date of its publication in the **Gazette** in so far as it relates to any land or part of any land in respect of which the Land Administrator has not made an award under s. 14(l) within the said period of two years, and, accordingly, all proceedings already taken or being taken in consequence of such declaration in respect of such land or such part land shall terminate and be of no effect.

The second notification which was published in the State **Gazette** on 17 February 1994 and which purports to amend the approximate area to be acquired from Lot 487 reads:

No. 221.

Dalam jadual kepada Pemberitahuan No.12 yang disiarkan dalam **Warta** Kerajaan Johor pada 7 Januari 1993 butir-butir berikut:

No. Lot Ukur	Hakmilik atau Pendudukan	Tuan punya berdaftar atau Penduduk yang direkodkan	Luas Lot	Lebih Kurang Luas yang hendak diambil
			E. R. P.	E. R. P.
Lot 487	Geran 15748	Keck Seng (Malaysia) Bhd	1,220 0 0	1,037 3 05

hendaklah digantikan dengan yang berikut:

Lot 487	CT.15748	Keck Seng (M) Bhd	1,220 0 0	830 0 32

The third notification, which was published in the State **Gazette** on 4 August 1994, announced that the approximate area to be acquired with regard to Lot

487 should read as originally stated in the first notification and not as amended *vide* the second notification; it reads:

> No. 1167.
>
> Pembetulan-Pembetulan
>
> Pemberitahuan Bil. 221 yang disiarkan dalam **Warta** Kerajaan Negeri Johor bertarikh 17 Februari 1994 adalah dibatalkan manakala pengambilan balik tanah seluas 1,037 ekar 3 rod 05 pol yang terkandung dalam Lot. 487 Geran 15748 yang terletak di Mukim Plentong, Daerah Johor Bahru sebagaimana Pemberitahuan Bil. 12 yang disiarkan dalam **Warta** Kerajaan Negeri Johor bertarikh 7 Januari 1993 adalah tidak terjejas.

The plaintiff's case can be summarised as follows:

(i) the second notification has amended the first notification and hence the first notification has ceased to exist and cannot be revived; if it is revived, any acquisition exercise carried out under the first notification is null and void.

(ii) that under the circumstances stated in (i) above, the plaintiff is entitled to get a fresh declaration under s. 8 of the Act;

(iii) alternatively, that the award made by the Land Administrator for Lot 487 should be based on its value as at 4 August 1994, i.e., the date of the third notification and not the date of the first notification and that the Land Administrator was wrong in awarding compensation based on its value as at the date of the first notification;

(iv) that even if the first notification was rightly revived, the value must still be at the date of the third notification;

(v) that by reviving the first notification, it has the effect of denying the plaintiff the benefits of a substantial increase in value of land during the period between the first and the third notification and this contravenes Article 13(2) of the Federal Constitution

The plaintiff's Counsel submitted that there is no provision in the Act which allow an amendment to be made to a declaration under s. 8 and its revival as purportedly done by the defendant - in the instant case, the defendant has exceeded his authority by amending the first notification and has subsequently abused his powers by cancelling the amendment and reviving the first notification which has ceased to exist in its original form because of the amendment.

He also contended that the notice issued by the defendant to commence proceedings for the acquisition of Lot 487 and the other lots belonging to the plaintiff and fixing the date of inquiry for the hearing of claims to compensation is defective as the notice and also the subsequent notices were issued in breach of s. 10(3) of the Act. He pointed out that the first notice which was dated 22 February 1994 stated that the approximate area to be acquired from Lot 487 was 1,037 acres 3 roods and 5 poles whereas by then the second notification, which was published on 17 February 1994, had amended the approximate area to be acquired to 830 acres 0 rood and 32 poles. He also pointed out that the subsequent notices issued by the Land Administrator dated 12 September 1994, 13 October 1994, 14 November 1994 and 28 November 1994 were not in compliance with the said s. 10(3) as they did not follow Form E of the Act.

Counsel then insisted that during the period between the first and the third notification, the value of all the lots belonging to the plaintiff, including lot 487 had appreciated in value by virtue of a notification dated 3 July 1993 which was published in the State **Gazette** on 19 August 1993 wherein the Chairman of the State Planning Committee, Johor, pursuant to s. 10(3) of the Town and Country Planning Act 1976 announced the following:

> In exercise of the powers conferred by subsection (7) Act 172 of s. 10 of the Town and Country Planning Act 1976, the State Authority of Johor has assented to the Draft Structure Plan of West Johor (Ref. RS.2/93) approved by the State Planning Committee of Johor on the 3 January 1993.

Counsel contended that all the lots owned by the plaintiff, including Lot 487 are situated within the areas contemplated by the Draft Structure Plan of West Johor, referred to in the above notification, which approved a "zone change" from agricultural to industrial "which markedly increased the value of Lot 487". He alleged that the defendant knew about this "zone change" four (4) days before the declaration was published, i.e., the first notification and hence the plaintiff has been unfairly prejudiced as the whole purpose of amending, cancelling, reviving and back-dating the said declaration was to deny the plaintiff the benefit of the substantial increase in value. He also alleged that the defendant's only purpose was to acquire at a "cheap price" and subsequently develop Lot 487 through other corporations and insisted that this "reveals bad faith" especially because the plaintiff itself, being a developer, could have developed the land.

To me, there are only two issues in this application, namely:

(i) whether the declaration made pursuant to s. 8 of the Act, i.e., the first notification has ceased to exist upon the publication of the second notification and if so, whether it can be revived by another notification, i.e., the third notification; and

(ii) whether the Land Administrator, in assessing the market value of any scheduled land, has to take into account the fact that the scheduled land is indicated in a development plan relating to town or country planning.

With regard to the first issue, it is not disputed that the first notification is a declaration in Form D made pursuant to s. 8 of the Act - that section provides that when the State Authority decides that any scheduled land is to be acquired for any of the purposes allowed under the Act, a declaration in Form D shall be published in the **Gazette** and s. 8(3) provides that the declaration in Form D shall be conclusive evidence that all the scheduled land referred to therein is needed for the purpose specified therein. From the contents of the first notification it is clear that the State Authority is acquiring, among others, Lot 487. That notification which was published in the **Gazette** on 7 January 1993 announced that the approximate area to be acquired from Lot 487 was 1,037 acres 3 roods and 5 poles out of an area of 1,220 acres (and leaving a balance of about 182 acres).

The second notification, which was published in the **Gazette** on 17 February 1994, i.e., about 13 months later, announced that as far as Lot 487 was concerned, the approximate area to be acquired should read as 830 acres 0 rood and 32 poles and not as stated earlier in the first notification. However, the third notification, which was published in the **Gazette** on 4 August 1994, announced that the approximate area to be acquired from Lot 487 as amended by the second notification was thereby cancelled and that the approximate area to be acquired as stated earlier in the first notification, still stands.

Counsel for the plaintiff has argued that by virtue of the second notification, the first notification ceased to exist and is not capable of being revived by the third notification. With respect, I cannot see any merit in this argument. The first notification, which is a declaration in Form D made pursuant to s. 8 of the Act is, according to s. 8(3), conclusive evidence that Lot 487 is to be acquired and hence, any proposed change in the approximate area to be acquired cannot at all, to me, vitiate or nullify the conclusiveness that Lot 487 will be acquired. In my view, the approximate area to be acquired is only a secondary matter and any amendment made as to the approximate area to be acquired before the conclusion of the enquiry by the defendant cannot vitiate or nullify that declaration. The publication of the declaration in the **Gazette** is merely to give public notice that the State Authority has decided that the lands described in the schedule to the declaration are needed for one of the purposes referred to in s. 3 of the Act and nothing more. If the acquisition process provided for in the Act is not proceeded with within two years, the declaration lapses - this is clearly provided for in s. 8(4) of the Act which states that a declaration in Form D shall lapse and cease to be of any effect on the expiry of two years after its publication in the **Gazette** if the Land Administrator has not made an award by then. I would think that any amendment made as to the approximate area to be acquired within the two years before the

conclusion of the enquiry by the defendant cannot at all have any effect on the declaration as to its conclusiveness that the scheduled land will be acquired. In the instant case, all the three notifications were published well within two years commencing 7 January 1993 and the Land Administrator has made his award on 5 December 1994 which is also within two years commencing 7 January 1993 and that being so, I cannot see how the declaration can be said to have ceased to be in existence.

In relation to the third notification, it is clear from its contents that the intention there was to announce that the second notification was thereby canceled - this cancellation would bring about the effect that the approximate area to be acquired from Lot 487 as stated in the declaration, i.e., the first notification, still stands. I cannot see any merit in the plaintiff's contention that the third notification has the effect of reviving the declaration which has ceased to exist. Since the declaration, i.e., the first notification never ceased to exist and neither has it lapsed, the question of its revival does not at all arise.

With respect, I think Counsel has over-emphasized the importance of notifications published in Government **Gazettes** - he seems to be of the view that once a notification is published in the **Gazette**, it cannot be amended or altered or even varied. To me, what is important is that the declaration published in the State **Gazette** announced that the State Authority has decided to acquire Lot 487 - the approximate area that will be acquired is only a secondary issue and any amendment in that respect and published in the **Gazette** cannot vitiate or nullify the State Authority's decision that lot will be acquired. With regard to the word **"Gazette"**, there is nothing supreme about it. A **Gazette** is nothing more than a channel for the Government, be it Federal or State, to give notice to the public of acts, orders or notifications. According to Volume I of *Jowitt's Dictionary of English Law* (2nd Edn.) the word **"Gazette"** means "the official newspaper of the Government ... At common law they are evidence only of acts of State published therein: but their use as evidence is extended by many statutes." Section 3 of Part I of the Interpretation Acts 1948 and 1967 (Consolidated and Revised - 1989) provides 'State **Gazette**' means the official **Gazette** of a State (including any supplement or special **Gazette**);" and s. 18 provides:

(1) The **Gazette** shall be published in parts as follows:

(a) ... ;

(b) ... ;

(c) ... ;

(d) ... ;

(e) a part which shall be published fortnightly every alternate Thursday commencing with the first Thursday in each year which shall contain

> all matter which is required to be published in the **Gazette** or which the Government deems it necessary to publish for general information other than matter which this subsection requires to be published in the other parts ....
>
> (2) Publication in the official **Gazette** of Malaysia shall constitute sufficient notice of any matter required to be published in the **Gazette** by or under any federal law ...
>
> (3) Where any matter is of local application only and is issued under the authority of a State officer or any person in the State having authority to do so under federal law it shall constitute sufficient notice thereof if the matter is published in the official **Gazette** of the state concerned.

A publication in the **Gazette** of notices made pursuant to the Act is only a notice to the pubic and/or to the landowner of a decision of the State Authority as the case may be and it has evidential value in that the notice itself can be proved under s. 78(l)(a) of the Evidence Act without the necessity of proving the original; s. 78(l)(a) provides:

> The following public documents may be proved as follows:
>
> (a) acts, orders or notifications of the Government of Malaysia or of any State in any of its departments:
>
> (i) by the records of the departments certified by the heads of those departments respectively;
>
> (ii) by a Minister in the case of the Government of Malaysia, and by the Chief Minister, a State Minister (if any), the State Secretary or the permanent secretary to the Chief Minister in the case of a State Government; or
>
> (iii) by any document purporting to be printed by the authority of the Government concerned;

I cannot also see any merit in the contention of the plaintiff that the defendant has abused his power when he made the amendments to the declaration in Form D *vide* the second and third notification and that the defendant should have issued a fresh declaration under s. 8. It is clear from the facts that the State Authority never intended to withdraw from the acquisition of Lot 478 although it has the power to do so by virtue of s. 35 of the Act; section 35(l) reads:

> The State Authority shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

I cannot see how an amendment to the approximate area to be acquired from Lot 487 can be termed an abuse of power. Although the Act is silent, it does not specifically prohibit the State Authority from making an amendment as to the approximate area to be acquired. The Act allows the State Authority to

withdraw from the acquisition which to me is a serious matter as the State Authority has to suffer certain consequences like paying compensation, damages and costs (s. 35(2)). I would agree that an outright withdrawal from acquiring Lot 487 with a subsequent change of mind by the State Authority would warrant a fresh declaration in Form D under s. 8 of the Act but I cannot see how a change in the approximate area to be acquired before an award is made would necessitate a fresh declaration.

The plaintiff has also contended that Form E, dated 22 February 1994 which was issued by the defendant pursuant to s. 10 of the Act and which is a public notice fixing the date of inquiry for the hearings of claims to compensation for all the lots belonging to the plaintiff, including Lot 487, was defective as the approximate area to be acquired from Lot 487 was stated as 1,037 acres 3 roods and 5 poles and not as amended by the second notification on 17 February 1994. The plaintiff also contended that subsequent notices with regard to the date of the hearings were not issued in Form E as required under the Act. I cannot see how this contention can hold water. Section 10 requires the Land Administrator to commence proceedings for the acquisition by giving public notice in Form E and by fixing the date of the inquiry for the hearing of claims. In the instant case, it was stated therein that the hearing would be conducted on 18 April 1994 but the facts show that on that date the plaintiff was informed, and this is not disputed, that the approximate area to be acquired from Lot 487 has been reduced to 830 acres 0 roods and 32 poles and that this has been published in the **Gazette**. The hearing was then adjourned to 19 May 1994.

As to what transpired on 19 May 1994 is not clear but subsequently another hearing was fixed for 12 September 1994 and the plaintiff was informed by the defendant of the new date by letter. However at that hearing date, the defendant, according to the plaintiff informed them that the approximate area to be acquired from Lot 487 should be based on the area as stated in the declaration, i.e., the first notification and he then requested them to submit a valuation report based on the area as originally stated in the declaration. Subsequently the defendant informed the plaintiff by letter that another hearing will be conducted on 24 October 1994 and later on 23 November 1994. As to what transpired on those dates is also not clear; meanwhile, on 3 October 1994 the plaintiff submitted its valuation reports to the defendant. Subsequently the plaintiff was informed by letter that the hearing will be conducted on 5 December 1994 and the facts show that defendant made his award on that date.

Based on the above facts, I cannot see any merit in the complaint raised by the plaintiff with regard to Form E. The approximate area to be acquired with regard to Lot 487 as stated in the said Form E may be outdated on the day it was issued but I cannot see how that can vitiate or nullify the declaration to acquire Lot 487. From my reading of the plaintiff's affidavits filed in support,

it is my view that the plaintiff was not even prejudiced or misled by this outdated particulars in the said Form E. They were immediately informed by the defendant on the first date of hearing that the approximate area to be acquired from Lot 487 has been amended - they did not make an issue out of it then neither did they forward any written protest about the amendment.

With regard to the complaint by the plaintiff about the subsequent notices sent in the form of letters as opposed to Form E by the defendant informing them as to the next date of hearing, I fail to understand why the plaintiff has made this into an issue. To me, those notices were never meant to be substitutes for Form E - those notices were in the form of letters and merely administrative in nature and were never meant to be statutory forms. Section 10 of the Act merely requires the defendant to commence proceedings for the acquisition by giving public notice in Form E and s. 12(3) provides that he may postpone any enquiry or adjourn any hearing of an enquiry from time to time. Nowhere is it stated in the Act that he must give notice in Form E whenever he fixes another date for the enquiry or hearing.

That being so, I would disregard both the above complaints with regard to Form E as they have no bearing on the plaintiff's application whatsoever.

In the alternative, the plaintiff has also submitted that in the eventuality that the Court rules that the first notification is valid, the market value for Lot 487 should be assessed as at the date of the third notification and not the first notification. He then referred to the First Schedule to the Act which deals with principles relating to the determination of compensation; that Schedule provides that in assessing the market value of any scheduled land, it has to be assessed at its value as at the date of the publication in the **Gazette** of the declaration made in Form D. He contended that since the third notification revived the declaration, the date on which the third notification was published would now be the new date of the declaration. I cannot see any merit in this contention. The third notification was clearly not a declaration in Form D but was merely a notice to inform that the approximate area to be acquired from Lot 487 is as stated in the declaration, i.e., the first notification and that the second notification was thereby cancelled and of no effect. Thus, to award the market value for Lot 487 otherwise than at the date of the publication of the declaration, i.e., the first notification, would clearly be contrary to the provisions of the First Schedule to the Act.

Within the same context, the plaintiff has also contended that it is contrary to Article 13(2) of the Federal Constitution to award them the market value of Lot 487, as assessed by the defendant, as at the date of the first notification as the value of Lot 487 has substantially increased by virtue of the "zone change" as mentioned earlier. Article 13(2) of the Federal Constitution reads

> No law shall provide for the compulsory acquisition or use of property without adequate compensation.

With respect, I cannot see the relevance of raising Article 13(2). This Article lays down the constitutional standard of an expropriatory law and has no bearing on the issue before me which is whether the market value of Lot 487 should be assessed as at the date of the first notification or the third notification. The Act itself is not being challenged and this Article is therefore irrelevant for the purpose of this action. I do not think it is necessary for me to delve further into this.

The second issue raised in this application is with regard to the increase in value of Lot 487 due to the "zone change" based upon the notification in the **Gazette** on 19 August 1993. That notification made by the Chairman of the State Planning Committee, Johor refers to the Town and Country Planning Act 1976 (hereafter referred to as "the TCPA") which is an Act promulgated to control and regulate town and country planning in local authority areas. Section 4 establishes for every State in West Malaysia a State Planning Committee (hereafter referred to as "the Committee") whose functions are, *inter alia*, "to promote in the State, within the framework of the national policy, the conservation, use and development of all lands in the State" (s. 4(4)(a)). Section 5 provides that every local authority shall be the local planning authority for the area of the local authority and it shall furnish the Committee with such returns and information relating to its activities as the Committee shall require from time to time.

The TCPA also provides that the local planning authority shall institute a survey of its area and prepare and submit to the Committee a report of its survey and at the same time prepare and submit to the Committee for its approval a draft structure plan relating to, *inter alia*, the general proposals of the planning authority in respect of the development and use of land in that area. Section 10(6) provides that upon approving the draft structure plan, the committee shall submit it to the State Authority for its assent to the plan and upon assent, the plan comes into effect and s. 10(7) provides that the Committee shall cause the fact of the assent to be published in the State **Gazette**. Section 18 provides that no person shall use or permit to be used any land or building otherwise than in conformity with the local plan and s. 19 prohibits development without planning permission.

It is the plaintiffs contention that the said Draft Structure Plan of West Johor which was published in the **Gazette** on 19 August 1993 has "markedly increased the value of Lot 487" as that plan approved a "zone change" from agricultural to industrial. With respect, I cannot see how such a contention can hold water. The First Schedule to the Act, which is entitled *"Principles Relating To The Determination Of Compensation"*, would be relevant in dealing with this contention; s. 1(2B) of the First Schedule reads:

> In assessing the market value of any scheduled land which is indicated in any development plan under any law relating to town or country planning, whether expressly or by implication, as land intended for a public purpose ..., the land

shall be treated as if it had not been indicated in the development plan as intended for a public purpose and was not in fact so intended ...

The said s. 1(2B) read together with the provisions of the TCPA referred to earlier clearly provides that the fact that any scheduled land is situated in an area within the contemplation of any draft structure plan cannot be taken into account in assessing the market value of the scheduled land. The plaintiff claims that Lot 487 is situated in the area within the contemplation of the said Draft Structure Plan of West Johor as approved by the State Planning Committee, Johor as a result of which its value has substantially increased as there has been a "zone change" from agricultural to industrial. That may or may not be the result but as far as the defendant is concerned, such an effect would be irrelevant when he makes a full enquiry into the value of Lot 487 to assess the amount of compensation which in his opinion is appropriate as the said s. 1(2B) makes it clear that in assessing the market value of any scheduled land, any development plan under any law relating to town and country planning has to be disregarded.

One of main principles to be applied to determine compensation is found in s. 1(2) of the First Schedule to the Act which reads "In assessing the market value the effect of any express or implied condition of title restricting the use to which the scheduled land may be put shall be taken into account". It is not disputed that the category of land use for Lot 487 is "agriculture" at the date of the declaration under s. 8. Thus the plaintiff cannot indirectly claim that the category of land use for Lot 487 has been altered from "agriculture" to "industry" by virtue of the approved Draft Structure Plan for West Johor. Section 19(l) of the TCPA provides that no person shall commence, undertake or carry out any development unless planning permission in respect of the development has been granted to him and it is clear from this provision that the TCPA does not purport to oust the provisions of the National Land Code. The National Land Code provides that a registered proprietor of any alienated land has to apply to the State Authority for the alteration of any category of land use and this necessarily implies that the plaintiff cannot at all claim that the said Draft Structure Plan for West Johor has the same effect as an alteration of category of land use to "industry" which would result in a substantial increase in value for Lot 487. The defendant can only assess the value of Lot 487 on the basis of its category of land use being "industry" had there been such an alteration approved by the State Authority prior to the publication of the declaration. Thus, as the "zone change" cannot at all have any effect in assessing the amount of compensation for the acquisition of Lot 487, I fail to see any merit in the plaintiff's contention that they have been denied the benefits of a substantial increase in value of land during the period between the first and the third notification.

As discussed earlier, the plaintiff has since made an objection in Form N with regard to the amount of compensation awarded and that is the remedy available to them under the provisions of the Act. I am aware that an action for a declaration is a means of challenging administrative acts and decisions which a plaintiff claims to be unlawful; in *Imperial Tobacco Ltd. v. Attorney General* [1981] AC 718 Lord Lane said (at page 750):

> Anyone is on principle entitled to apply to the Court for a declaration as to their rights unless statutorily prohibited expressly or by necessary implication.

However, in the instant case I cannot see how the plaintiff can be entitled to the various declarations sought when they have failed to show:

(a) that the first notification, i.e., the declaration made in Form D pursuant to s. 8, has ceased to exist; and

(b) that the award made by the Land Administrator was contrary to the provisions of the Act.

For the reasons stated above, this application is dismissed with costs.

Reported by W.A. Sharif